

SITE DEVELOPMENT PERMIT

FILE NO.	H13-041
LOCATION OF PROPERTY	South side of West St James Street, between Terraine and North San Pedro Streets
ZONING DISTRICT	DC Downtown Core
GENERAL PLAN DESIGNATION	Downtown
PROPOSED USE	Site Development Permit to demolish/remove a single-family residence (152 Terraine Street), remove 6 ordinance sized trees, and to allow a mixed-use development consisting of a 6-level parking garage (three levels below grade), up to 20,000-square-feet of retail, and up to 643 multi- family residential units within two towers (20- stories and 22-stories), on a 1.8 gross acre site.
ENVIRONMENTAL STATUS	Supplemental Environmental Impact Report (SEIR)
OWNER/ADDRESS	190 West St James, LLC c/o Mark Tersini 21710 Stevens Creek Boulevard, #200 Cupertino, CA. 95014
OWNER/ADDRESS	John J. Garvey III, Revocable Trust 10 Almaden Blvd, Ste 1250 San Jose, CA. 95113

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Downtown on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The site is located in the DC Downtown Core Zoning District.
3. The site is approximately 1.8 acres in size.
4. This is a Site Development Permit to allow the demolition/removal of a single-family residence (152 Terraine Street), remove 6 ordinance sized trees, and to allow a mixed-use development consisting of a 6-level parking garage (three levels below grade), up to 20,000-square-feet of retail, and up to 643 multi-family residential units within two towers (20-stories and 22-stories).

5. Retail uses are proposed on the ground floor level along San Pedro Street.
6. Development in the surrounding project area is a mix of retail/commercial, office, and residential uses. The project site is bound by West St James Street to the north, North San Pedro Street to the east, the historic Fallon House to the south, and Terraine Street to the west.
7. Immediately north of West St James Street is a 15-story residential condominium building and a two-story residence that has been converted to a commercial building. North and northwest of the site is a small park, Pellier Park. Northeast of the project site is the current and former San Jose Fire Station 1 buildings. East of North San Pedro Street are two commercial/office buildings that are 10 and 12 stories tall with a surface parking lot along North San Pedro Street. Southeast of the site is a City operated parking garage. The Fallon House is south of the project site. Across the street from the Fallon House, on the south side of San Pedro Street is San Pedro Square, which is a city block comprised of one and two story buildings with restaurant and retail uses. The 1.26 acre parcel southwest of the site is currently under construction with a 20-story, 217-foot tall mixed use development (H07-008 - Centerra). West of Terraine Street is the Superior Court building.
8. The proposed development is adjacent to the Fallon Residence located at the northwest corner of North San Pedro and West St. John Streets (175 West St. John Street), which was designated a City Landmark (HL77-9) in 1977. Another City Landmark, the Luis Maria Peralta Adobe (HL77-1), the City's oldest residential building is located on the south side of West St. John in San Pedro Square, and is more than 100 feet away from the proposed project. The proposed development is also across the street from Pellier Park, a designated City Landmark (HL77-3). The Superior Court building on the west of Terraine Street occupies the old Levi Strauss Factory building, which is considered a "Structure of Merit" on the City of San José Historic Resource Inventory. The proposed project will include the demolition/removal of a single-family residence, which is also a "Structure of Merit," located on the east side of Terraine Street, approximately 120 feet north of West St. John Street. The old Fire Station 1 building, located northeast of the site at 201 N Market Street, is a City Landmark (HL08-169) and is in process for listing on the National Register.
9. The Fallon House is a two-story residential building currently owned and operated by the City of San José. The house, which is oriented toward North San Pedro Street, is a designated City Landmark and is considered eligible for listing on the National Register of Historic Resources. The Italianate style home was built by an unknown architect in 1859, and was once the home of a San Jose resident, Thomas Fallon. The building is currently used for public tours, museum, and educational purposes.
10. The proposed project will include the demolition/removal, or relocation of a single-family residence located at 152 Terraine Street, which is listed as a Structure of Merit on the City of San Jose Historic Resources Inventory. The neoclassical-style cottage, known as the Vogliazzo Rental, was constructed in 1908, and is the only remaining structure on the project site. The exterior has undergone few, if any, alterations. The residence is one of four identical houses that were originally located on the east side of Terraine Street. The building's setting was altered beginning circa 1958 when the southernmost dwelling was replaced with a parking lot at the southern corner of former San Augustine Street (currently W. St. John Street) and Terraine Street. At present, 152 Terraine Street is the only dwelling of the four that remains; the other two were removed at some point for a parking lot. This structure is not eligible for listing on the National or California Register under any criteria because it is not associated with significant events, persons, or patterns of history. The applicant stated that

the residence would be offered for relocation. If no interested party is found to relocate the house, it will be demolished.

11. Multi-family residential and commercial retail uses are permitted uses in the DC Downtown Core Zoning District.
12. Under the provisions of Table 20-140 of the San Jose Municipal Code, a total of 643 vehicle parking spaces are required for the residential portion of the project based on 643 residential units. A total of 807 vehicle parking spaces are proposed on-site. No parking is required for commercial retail uses in the DC Downtown Primary Commercial Zoning District.
13. Under the provisions of Table 20-120 of the San Jose Municipal Code, a total of 161 bicycle parking spaces are required for the residential portion of the project based on 643 residential units. A total of 169 bicycle parking spaces are proposed on-site.
14. Under the provisions of Section 20.100.610(A)(1) of the San José Municipal Code, a Site Development Permit is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure on any site.
15. Under the provisions of Section 20.80.460 of the San Jose Municipal Code, the Director, or on appeal the Planning Commission or City Council, shall determine whether the benefits of permitting the demolition, removal or relocation of a building outweighs the impacts of the demolition, removal or relocation of a building prior to the issuance of any development permit which allows for the demolition, removal, or relocation such building.
16. Under the provisions of Section 20.70.110 of the San Jose Municipal Code, new structures exceeding 150 feet and a floor area ratio of 6:1 which are constructed within 100 feet of a City Landmark or Contributing Structure in a designated landmark district shall be reviewed by the Historic Landmarks Commission prior to consideration or approval of a development permit for new construction.
17. On January 9, 2014, the project was referred to the Historic Landmarks Commission.
18. A total of 16 trees will be removed for the proposed project. Six of these trees are 56-inches or more in circumference, of which one is a tree-of-heaven.
19. Under the provisions of Section 20.70.200(A) of the San Jose Municipal Code, properties located in the downtown zoning districts shall only be subject to the height limitations necessary for the safe operation of San José International Airport.
20. The development plan sets identify the maximum building heights as 228 feet above ground for the east tower, and 211 feet above ground for the west tower. The San Jose Airport confirmed that the proposed building heights depicted in the plan set would not exceed the elevation limits needed to protect for existing airline OEI emergency procedures.
21. On February 26, 2014, the Director of Planning adopted a Supplemental Environmental Impact Report for the project.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, that under the provisions of Section 20.80.440(A) of the San José Municipal Code, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.100.

1. The Director of Planning has considered the following in evaluating the proposed demolition:
2. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
3. The failure to approve the permit would jeopardize public health, safety or welfare;
4. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
5. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
6. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
7. Rehabilitation or reuse of the existing building would not be feasible; and
8. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:

1. The site is not located in a National Register or City Landmark District, or City Conservation Area.
2. The architecture of the proposed structure is compatible in terms of scale with the existing historic building on the adjacent parcel (The Fallon House).
3. The proposed project is in conformance with the California Environmental Quality Act.
4. The benefits of permitting the demolition, removal or relocation of the subject buildings outweigh the impacts of the demolition, removal or relocation.

Finally, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts with respect to the Site Development Permit findings (Section 20.100.630), that:

1. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious in that:
 - a. Building mass and bulk is offset through changes of plane, step backs, and balconies.
 - b. Rooftop equipment is enclosed and integrated into building form.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
 - a. The proposed retail pavilion and open courtyard area will add visual interest and encourage pedestrian activity adjacent to existing public spaces.
 - b. The structure is comparable in size to adjacent buildings, including a 9-story office building located to the east across Market Street, a 15-story office building located to the south across Post Street, and a 15-story commercial building located to the west across San Pedro Street.

- c. The architecture is compatible in terms of scale with the existing historic buildings on the adjacent parcels in that the height of the proposed parking structure is comparable to the height of the Alcantara Building/Metropole Hotel and Sunol Building.
 - d. At least 75 percent of the Market Street frontage will be ground-floor commercial space with transparent façade to continue the storefront feature of the adjacent Alcantara Building/Metropole Hotel.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties in that:
- a. A Mitigated Negative Declaration was granted for this project under the provisions of environment review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
 - b. The project establishes a Mitigation Monitoring or Reporting Program to address adverse effects to air quality, biological resources, cultural resources, and hazards and hazardous materials.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
- a. Parking garage ventilation louvers are screened by decorative stainless steel mesh panels.
 - b. Utility and trash facilities are located inside the building.
 - c. Rooftop equipment is screened from off-site view.
5. Traffic access, pedestrian access and parking are adequate in that:
- a. The project is in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3).
 - b. The project includes the increasing sidewalks along Market Street to a 15-foot width and a 12-foot width along San Pedro Street.
 - c. The proposed site improvements enhance the parking area for the subject site and maintain the access with the adjacent commercial parcel.
 - d. The project conforms to the vehicle and bicycle parking requirements set forth in the Zoning Ordinance.
 - e. The project includes two two-way driveways on San Pedro Street for vehicle access to the parking structure on-site.
6. The application is consistent with site's Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation of Downtown in that:
- a. Consistent with General Plan Land Use Policy 2.2, the project contributes to housing growth capacity in the downtown area to support key infrastructure investments, including the planned Bay Area Rapid Transit (BART) system.

- b. Consistent with General Plan Land Use Policy 3.1, the project proposes residential development in compact, intensive form to maximize social interaction other downtown activities, including employment, entertainment, and cultural uses.
- c. Consistent with General Plan Land Use Policy 3.4, the project's ground-floor commercial space further facilitates the development of retail and service establishments downtown.

After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, the Director of City Planning finds that:

- 1. The location of the trees with respect to the proposed improvements unreasonably restricts the economic development of the parcel in question.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
- 2. **Permit Expiration.** This Site Development Permit shall automatically four (4) years from and after the date of issuance hereof by said Director, if within such 4-year period, the proposed construction of building has not commenced, pursuant to and in accordance with the provisions of this Site Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code.
- 3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
- 4. **Conformance to Plans.** Development of the site shall conform to approved Site Development plans entitled "1 South Market Apartments," dated February 13, 2013, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.

5. **Revocation.** This Site Development Permit is subject to revocation for violation of any of its provisions or conditions.
6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
7. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Site Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San José Municipal Code.
8. **Required Plan Revisions.** Prior to the submittal for a Building Permit for the structures, the permittee shall obtain approval of a Major Permit Adjustment (billed on a time and material basis for staff time in excess of one and a half hours) addressing each of the items below.
 - a. **Materials Board.** Provide a board with actual samples of proposed materials and colors. Call-out the material of each element on the building elevations.
 - b. **Active Building Frontages.** Revise the elevations to minimize expanses of blank walls along Terraine Street and the private paseo along the southern property line by incorporating design considerations listed in the City of San Jose Downtown Design Guidelines (pg. 50-52) to the satisfaction of the Director of Planning, Building, and Code Enforcement.
 - c. **Flexible Ground-floor Uses.** Submit revised plans that demonstrate that the loading area at the southwest corner of the property, the leasing office, and the bicycle parking areas could be converted to accommodate future retail uses.
 - d. **Parking Garage, West Elevation.** The west façade (San Pedro Street) of the parking structure shall be revised. The revised plan shall include a woven stainless steel mesh panel screen extending from the north portion of the upper levels of the parking structure to the ground-floor at the pedestrian level between the northerly vehicle gate and the fire pump room doors. In addition, provide details of the proposed building materials, specifying varied textures and colors of the CMU block wall. Parking structure egress stair door shall be of transparent glass. Provide a canopy over the egress stair door to define the doorway.
 - e. **Signage.** Submit revised plans showing the ability of the building façade to accommodate a variety of different signage types of varying size amounts and illumination available for ground-floor commercial tenant spaces, as allowed per Title 23 (Sign Ordinance) of the San Jose Municipal Code, including fin signs.
 - f. **Landscaping.** Provide a detailed landscaping plan for the 4th level pool deck, the rooftop common terraces, as well as the retail pavilion area.

- g. **Tree Removals and Replacement.** This Permit includes the removal of six (6) ordinance-sized tree and eleven (11) non-ordinance sized trees on-site. Provide a landscaping plan addressing the required replacement of trees at the below stated ratios. The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees. The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with the replacement requirements. Such evidence shall be labeled H13-041 and sent to the Planning Project Manager within 30 days of the replacement of the subject trees.

Tree Replacement Requirements			
Diameter of tree to be Removed	Native	Non-Native	Minimum Size of Each Replacement Tree
17.8 inches or greater (56.0 Inches Circumference)	5:1	4:1	24-inch box
12 – 17.8 inches (37.7 – 56.0 Inches Circumference)	3:1	2:1	24-inch box
Less than 12 inches (Less than 37.7 Inches Circumference)	1:1	1:1	15-gallon container

In the event that the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented to the satisfaction of the Director of Planning, Building, and Code Enforcement:

- i. Replacement trees may be planted in the public right-of-way along the project frontage, if street trees do not currently exist or if there are gaps in street tree coverage. Contact the City Arborist at (408) 794-1901 or arborist@sanjoseca.gov for the designated street tree(s).
 - ii. A donation of \$300 per mitigation tree to Our City Forest non-profit organization, (408) 998-7337 or www.ourcityforest.org, for in-lieu off-site tree planting in the community. These funds shall be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to removal of the subject tree.
9. **Building Permit.** Procurement of a Building Permit from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
10. **Building Demolition.** A Demolition Only Permit may be issued for the demolition of the existing commercial building prior to the issuance of a Building Permit for the replacement mixed-use building.

11. **Foundation Permit.** A Foundation Only Permit may be issued for the foundation of the proposed mixed-use building prior to the issuance of a Building Permit for the replacement mixed-use building.
12. **Building Clearance for Building Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, H13-041, shall be printed on all plans submitted to the Building Division.
 - b. *Conformance Review.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to plan check approval and building permit issuance by the Building Division, the developer shall obtain confirmation from the Planning Division that the project conforms to all applicable requirements of the subject Permit, including the plan sets.
 - c. *Major Permit Adjustment Required.* The permittee shall comply with condition #8 of this permit, which requires the submittal and approval of a Major Permit Adjustment prior to the submittal of a Building Permit for the structure.
 - d. *Final Map Required.* Prior to the issuance of a Building Permit, the permittee shall secure approval and provide recordation of a Final Map to remove existing lot lines that cause the development to not comply with zoning and/or building code setbacks.
 - e. *FAA Clearance Required.* Prior to the issuance of a building permit, the permittee shall obtain from the Federal Aviation Administration a “Determination of No Hazard to Air Navigation” for each building high point. The permittee shall abide by any and all conditions of the FAA determinations (if issued) such as height specifications, rooftop marking/lighting, construction notifications to the FAA through filing of Form 7460-2, and “No Hazard Determination” expiration date. The data on the FAA forms should be prepared by a licensed civil engineer or surveyor using NAD83 location coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
 - f. *Air Quality Mitigation.*
 - i. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - ii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - iii. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - iv. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
 - v. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - vi. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- vii. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- viii. A publicly visible sign shall be posted with the telephone number and person to contact at the City of San Jose regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Bay Area Air Quality Management Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- ix. All diesel-powered construction equipment larger than 50 horsepower and operating on site for more than 2 days continuously shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent.
- x. Portable diesel generators, cranes, and hoists operating for more than 2 days shall be prohibited. Grid power electricity should be used to provide power at the construction site; or non-diesel generators (or diesel generators using bio-diesel fuel) may be used when grid power electricity is not feasible.

13. Public Works Clearance for Building Permit(s) or Map Approval: The applicant will be required to have satisfied the following Public Works conditions prior to the issuance of Building permits or the approval of the Map by the Director of Public Works, whichever occurs first. The applicant is advised to apply for any necessary Public Works permits prior to applying for Building permits.

- a. *Construction Agreement:* The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. *Transportation/Traffic:* This project is located in the expanded Downtown Core and is covered under the new San Jose Downtown Strategy 2000 EIR; therefore, no further traffic analysis is required. We conclude that the subject will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts.
- c. *Geology:*
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-8350 for more information concerning the requirements for obtaining this permit.
 - iii. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - iv. The Project site is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit

- or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. *Shoring:*
- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
 - ii. If tie-backs are proposed as part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000.
- e. *Stormwater Runoff Pollution Control Measures:* This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of site design measures, source controls, and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges. The project is required to comply with the following: Post-construction treatment control measures, shown on the project's Stormwater Control Plan, shall meet the numeric sizing design criteria specified in City Policy 6-29.
- f. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due. (Current estimate of all fees based on the project description is approximately \$384,233.95 and is subject to change based on the final project description).
- g. *Revocable Encroachment Permit (Street/Sidewalk Closures):* The Developer shall avoid impacting vehicular and pedestrian traffic. But when unavoidable, the Developer shall apply for a Revocable Encroachment Permit at the Implementation Stage for any proposed sidewalk and lane closures to support the onsite construction activities.
- i. The following should be included with the Revocable Encroachment Permit application but are not limited to:
 - 1) *Letter of Intent:* This document should provide a detailed description of the reasons for the sidewalk/lane closures and why they are absolutely necessary (man lifts, baker tanks, staging area, concrete pumping activities, etc.) and reasons why covered pedestrian walkways will not be provided (i.e. swinging loads over sidewalk not safe for pedestrians).
 - 2) *Multi-Phased Site Specific Sketches:* These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should also show the surrounding block and should show in detail the vehicular and/or pedestrian diversion route that shows the locations of appropriate safety equipment such as barricades, cones, arrow boards, signage, etc.
 - ii. Developer shall minimize the impacts to vehicular and pedestrian traffic by implementing closures only when absolutely necessary and limiting the time of closures to coincide with construction activities.

- iii. If proposed lane and parking closures are part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at:
<http://www.sanjoseca.gov/index.aspx?NID-3713>. Developer shall contact the Department of Transportation (DOT) at (408) 535-8350 for more information regarding these applications.
- h. *Parks:* This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- i. *Undergrounding:*
 - i. The In Lieu Undergrounding Fee shall be paid to the City for all frontages adjacent to St. James Street and San Pedro Street prior to issuance of a Public Works clearance. 100 percent of the base fee in place at the time of payment will be due. Currently, the 2013 base fee is \$418 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's 20 City Average Cost Index. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued. (Based on 2013 rate, the fee is approximately \$289,256)
 - ii. The Director of Public Works may, at his discretion, allow the developer to perform the actual undergrounding of all off-site utility facilities fronting the project. Developer shall submit copies of executed utility agreements to Public Works prior to the issuance of a Public Works Clearance.
- j. *Assessments:* This project is located within the Basic Zone of the Downtown San Jose Property-Based Business Improvement District which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. The benefiting properties within the district pay for the services through annual assessments placed on the property tax bills which may be increased by up to 5% each year. The 2013-14 assessment is calculated based on the land use of its building and lot square footage. Basic Zone properties pay \$0.057441215 per building and lot square footage for commercial uses; \$0.038772602 per building and lot square footage for residential use. Premium Zone properties pay \$0.096213817 per building and lot square footage for commercial uses; \$0.077545204 per building and lot square footage for residential use. Public agencies and non-profit uses are not exempt from this special assessment. Future year assessments will continue to be collected through the County property tax bills listed under Tax Code 916 "SJ DOWNTOWN PBID."
- k. *Street Improvement/Easement Dedications:*
 - i. Per the San Jose Downtown Streetscape Master Plan, construct the following:
 - 1) A 15-foot attached sidewalk with tree wells along San Pedro Street.
 - 2) A 10-foot attached sidewalk with tree wells along St. James Street.
 - 3) A 12-foot attached sidewalk with tree wells along Terraine Street.

- ii. Upgrade handicap ramps at the corners of San Pedro Street & St. James Street, and Terraine Street and St. James Street per current City standards.
 - iii. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - iv. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - v. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- l. *Sanitary:*
- i. Based on the sanitary sewer flow information provided by the applicant there appears to be adequate capacity in the 48-inch sanitary sewer line located on Terraine Street. There is insufficient capacity in the 10-inch sanitary sewer line located on N. San Pedro Street.
 - ii. Staff recommends the project connect both towers to the 48-inch sanitary sewer located on Terraine Street.
- m. *Storm:* Staff has reviewed the storm sewer proposal and there appear to be adequate capacity in the 21-inch storm line located on St. John Street.
- n. *Commercial Signs:* A separate Revocable Encroachment Permit must be applied for any proposed signs associated with the retail component of this project. Any proposed signs projecting into the public right-of-way cannot project more than four feet and six inches (4'-6") from the surface of which it is attached and must be located at least eight (8) feet above grade.
- o. *Greater Downtown Area Master Plans:* This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- p. *Electrical:* Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- q. *Street Trees:* The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Street trees shall be installed in cut-outs at the back of walk. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

14. Cultural Resources Mitigation.

- a. Prior to the issuance of demolition and grading permits, and consistent with City policy, the project proponent will be required to complete subsurface testing to determine the extent of possible resources on-site. Subsurface testing will be completed by a qualified archaeologist. Based on the findings of the subsurface testing, an archaeological resources treatment plan will be prepared by a qualified archaeologist.

- i. Prior to the issuance of demolition and grading permits, implementation of the plan, by a qualified archaeologist, will be required. The treatment plan will utilize data recovery methods to reduce impacts on subsurface resources.
- b. All historic-era features identified during exploration will be evaluated based on the California Register of Historical Resources criteria consistent with the archaeological treatment plan. After completion of the field work, all artifacts will be cataloged and the appropriate forms will be completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University.
- c. In addition to the archaeological resources treatment plan outlined above, measures consistent with the mitigation measures outlined in the Downtown Strategy 2000 FEIR are included in the project to further reduce impacts to subsurface cultural resources.
- d. During demolition and construction, a historical architect and structural engineer shall monitor the Fallon House and report any changes to existing conditions, including, but not limited to, expansion of existing cracks, new spalls, or other exterior damage/deterioration. Monitoring reports shall be submitted to the City's assigned staff on a periodic basis to be determined by City staff.
 - i. If, in the opinion of the structural engineer and historical architect, substantial adverse impacts to historic resources related to construction activities are found during construction, the monitoring team shall inform the project sponsor, or sponsor's designated representative responsible for construction activities, as well as the City's assigned staff. The project sponsor and the City shall consider the structural engineer and historical architect's findings and recommendations and mutually agree on corrective measures, which shall be carried out by the project sponsor.
- e. Prior to demolition and construction, the historical architect shall establish a training program for construction workers involved in the project that communicates the importance of protecting historic resources. This program shall include information on recognizing historic fabric and materials, and directions on how to exercise care when working around and operating equipment near the historic structures, including storage of materials away from historic buildings. It shall also include information on means to reduce vibrations from demolition and construction, and monitoring and reporting any potential problems that could affect the historic resources in the area. The project sponsor shall be responsible for implementation of the training program. The training program shall be reviewed and approved by City of San José staff.

15. Biological Resources Mitigation.

- a. Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.
 - i. If it is not possible to schedule demolition and construction between September and January, preconstruction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close

to work areas to be disturbed by construction, the ornithologist, in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.

16. **Fire Clearance for Issuing Permits.** The permittee will be required to comply with all applicable fire and building codes and standards relating to fire and panic safety as verified by the Fire Department during the Building Permit process.
17. **Construction Impact Mitigation Measures.** The permittee is responsible for notifying all contractors of the conditions of this permit and that they shall perform construction activities in compliance with these conditions, or be subject to enforcement action.
 - a. *Compliance.* The applicant shall ensure that the following construction impact mitigation measures are fully complied with throughout the duration of all construction activities associated with this project and related off-site construction work. Failure to comply with these conditions by the applicant, their contractors or subcontractors shall be cause for shutdown of the project site until compliance with the following conditions can be ensured by the City. These construction impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
 - b. *Noise Mitigation.* Prior to the issuance of a Building Permit, the Developer shall have a construction noise logistics plan prepared by a qualified acoustical consultant that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints. The logistics plan will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.
 - c. *Construction Hours.* Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Interior construction that is not audible at the adjacent property lines is permitted on Saturday and Sunday between 9:00 am and 6:00 pm. Accommodations for necessary extended construction activities such as matt slab pours, crane erection, and power connections may be allowed on a case-by-case basis with a required 5-day advance approval by the Director of Planning, Building and Code Enforcement.
 - d. *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number H12-022, city contact and phone number (department and phone number), and shall be displayed on a weatherproof sign posted at each entrance to the project site.
 - e. *Enforcement.* The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.

- f. *Dust Control.* On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
18. **Green Building.** The project shall comply with the provisions of Ordinance No. 28622 in the San Jose Municipal Code or subsequent ordinance for private-sector green building that is in effect at the time that a building permit application is submitted to the Department of Planning, Building and Code Enforcement Building Division. For new high-rise residential construction measuring 75 feet in height or greater, a completed LEED checklist is required with application for Building Permit.
19. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
20. **Building and Property Maintenance.** The developer shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
21. **Colors and Materials.** All building colors and materials are to be as specified on the approved plan set.
22. **Alcoholic Beverages.** This permit does not include any approval for a drinking establishment or the off-sale of alcoholic beverages. Any alcohol sales must obtain all appropriate permits.
23. **Late Night Uses.** Late night uses require the approval of a Conditional Use Permit in accordance with Chapter 20.70 of Title 20 of the San José Municipal Code.
24. **Roof Equipment.** All roof equipment shall be screened from off-site view. Screening shall be architecturally compatible with the primarily building.
25. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
26. **Signage.** This permit does not include the approval of any signage. Any future signs are to conform to the regulations of Title 23 of the Municipal Code and allowed with the issuance of a Sign Permit Adjustment.
27. **Lighting.** This permit includes the approval of wall-mounted, as shown on the approved plans. Any additional lighting are to conform to the City of San José's Outdoor Lighting Policy and allowed with the issuance of a Permit Adjustment.
28. **Loading Activities.** All loading activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
29. **No Outside Storage.** No outside storage is permitted for the project.
30. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
31. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
32. **Nuisance.** The uses of this site shall be operated in a manner that does not create a public or private nuisance. Nor shall the uses adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.

33. **Recycling.** It is required that scrap construction and demolition debris be recycled instead of disposing of it in a landfill. An infrastructure exists within San José to accommodate such recycling efforts. Integrated Waste Management staff can provide assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material. Additional information may be found at <http://www.sjrecycles.org/construction-demolition/cddd.asp> or by contacting the Commercial Solid Waste Program at (408) 535-8550.

APPROVED and issued on this **26th day of February, 2014.**

David Sykes, Interim Director
Planning, Building, and Code Enforcement

Deputy